

4 February 1988

OCA 88-0394

MEMORANDUM FOR THE RECORD

SUBJECT: Administration Floor Position on S. 1721

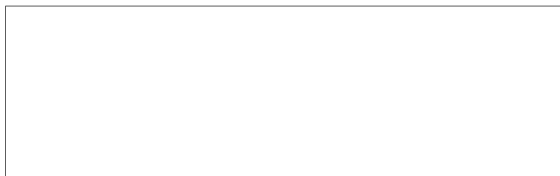
1. On 3 February 1988, I contacted Annette Rooney at OMB to provide the views of the Agency on the draft statement of policy on S. 1721, the Intelligence Oversight Act of 1988. The statement of Administration policy would be issued just prior to the Senate vote on S. 1721. A copy of the draft statement is attached.

2. I informed Ms. Rooney that the Agency wanted to delete the last two items in the statement that pertained to the definition of special activities in the bill. I stated that the Agency's concern with the definition of special activities in the bill had been in part resolved by the Committee report accompanying S. 1721, and that the draft statement could make it difficult for the Agency to interpret the definition of special activities in the bill in a manner consistent with current practice. I also informed Ms. Rooney that our position had been discussed with the NSC staff, and that they concurred in our recommendation to delete the last two items pertaining to special activities. Ms. Rooney responded that the last two items in statement of policy on S. 1721 would probably be deleted.

3. On 4 February, I received a call from Rick Cinquegrana, Office of Intelligence Policy and Review, DoJ, on the Administration floor statement. He expressed surprise that CIA requested the two items in the floor statement on special activities be deleted. I informed Mr. Cinquegrana of the position of the General Counsel against the creation of "negative" legislative history and how our position in the Senate was consistent with the position the Director would take in his testimony before HPSCI on H.R. 3822. Mr. Cinquegrana stated that Mary Lawton would go along with the deletion of the first item in the floor statement pertaining to special activities. However, he stated that the Department was very concerned about the implications of legislation that would apply the Executive Order definition of special activities to cover other agencies and departments of the government not involved in intelligence activities. Mr. Cinquegrana stating that Mary Lawton would oppose the CIA position on deleting the

second item in the floor statement pertaining to special activities. Mr. Cinquegrana also stated that the views of the CIA on this issue should not be controlling since this matter primarily affects DoJ.

4. I expressed surprise that the Department was taking this position. I informed Mr. Cinquegrana that at none of the meetings I attended with the SSCI or NSC was there an objection expressed by DoJ to applying in law the Executive Order definition of special activities to all government agencies and departments. I also pointed out that Executive Order 12333 currently mandates that all departments and agencies obtain a Presidential finding to cover special activities as defined in that Executive Order. Mr. Cinquegrana responded that the DoJ had interpreted the Executive Order definition of special activities to cover intelligence activities that are engaged in by agencies or departments assigned to carry out those type of activities.¹ Thus, certain activities of the DoJ that might be considered "special activities" if the Executive Order definition was given a literal reading were not authorized by a finding because the special activities definition was read in the context of applying to intelligence and not law enforcement activities. Mr. Cinquegrana used as an example DEA operations conducted abroad. I informed Mr. Cinquegrana that this position was contrary to the position that the NSC, CIA, DoD, State and DoJ took with the SSCI; namely, that using the Executive Order definition of special activities would maintain the existing standard used to determine whether a finding is necessary to authorize a particular activity! I cautioned Mr. Cinquegrana that it would be difficult to get the NSC staff to accept this new position, and that Mike O'Neil might also have problems with the position of the Department.



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Attachment as
stated

¹Mr. Cinquegrana did acknowledge that the Executive Order definition of special activities would also apply to agencies that do not traditionally engage in foreign intelligence activities, but which are designated by the President to perform covert action activities.

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(5 February 1988)

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SUSPENSE

3FEB88

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Action completed.

See - 4 Feb. MRF from
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STATEMENT OF ADMINISTRATION POLICY

DRAFT

January 28, 1988
(Senate)

S. 1721 - Intelligence Oversight Act of 1987
(Sen. Cohen and seven others)

The President's senior advisors will recommend a veto of S. 1721 if it is presented to the President because it raises a number of serious constitutional issues.

Specifically S. 1721 would:

- unconstitutionally infringe on the foreign policy powers of the President by requiring him to report every "finding" approving a covert activity to the intelligence committees of the Congress within 48 hours of the signing of that finding; and
- seriously impinge on the President's ability to fulfill his constitutional duties in the field of foreign affairs by virtually eliminating the flexibility to determine the timing and substance of Congressional notification due to the disclosure requirements in sections 502 and 503.

In addition, the definition of "special activity" in S. 1721 is objectionable because:

- it treats as special activities subject to reporting requirements, all CIA activities that are not solely intended to collect intelligence and as such would include a far broader range of activities than are currently reported; and
- it is not limited to agencies involved in intelligence activities and may require findings and reports to Congress concerning activities that have not been considered covert actions in the past.

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

SPECIAL

January 29, 1988

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer -

National Security Council	
Department of Justice (Perkins 633-2113)	17
Department of Defense (Brick 697-1305)	06
Department of State (Howdershell 647-4463)	25
Department of the Treasury (Carro 566-8523)	28
Central Intelligence Agency	

SUBJECT: Draft Statement of Administration Policy on S. 1721,
Intelligence Oversight Act of 1987.

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than 12:00 NOON, WEDNESDAY, FEBRUARY 3, 1988.

Questions should be referred to Sue Thau/Annette Rooney (395-7300), the legislative analyst in this office.

Ronald K. Peterson

RONALD K. PETERSON FOR
Assistant Director for
Legislative Reference

Enclosures

cc: A. B. Culvahouse, Jr.
R. Neely

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